

INDIANA COURT OF APPEALS
CASE AT A GLANCE



CONTRACT LAW

Does the definition of "bodily injury" in an insurance policy include emotional injuries such that family members who witnessed their husband/father's injuries are entitled to separate bodily injury claims under the policy?

*State Farm
Mutual
Automobile
Insurance
Company v.
Jakupko*

Appeal from:
Hamilton
Superior Court
(Noblesville)

The Honorable
Steven R.
Nation, Judge

**Oral
Argument:**
September 6,
2006
3:00 p.m. –
4:00 p.m.
30 minutes
each side

CASE SYNOPSIS

**Facts and Procedural
History**

On July 14, 2002, Richard Jakupko was driving a vehicle in which his wife, Patricia, and their children, Nicholas and Matthew, were passengers. A vehicle driven by Brianne Johnson collided with the Jakupkos' vehicle, and the Jakupkos each sustained bodily injuries as a result. Richard sustained the most serious injuries, including fractures in his cervical spine resulting in quadriplegia and a closed head injury resulting in permanent mental deficits. As a result of witnessing Richard's life-altering injuries, Patricia, Nicholas and Matthew each suffered emotional distress.

Because Johnson was at fault in causing the collision, her insurance company paid the Jakupkos \$500,000,

which was the policy limit under Johnson's policy with Safeco Insurance Company. Because the Jakupkos' damages far exceeded that limit, they sought compensation through two insurance policies Richard owned with State Farm: a personal liability umbrella policy and an automobile policy. State Farm paid the Jakupkos \$1 million under the umbrella policy and an additional \$100,000 under the underinsured motorist ("UIM") provision of the automobile policy.

Richard's automobile insurance policy includes UIM coverage in the amount of \$100,000 for "each person" and \$300,000 for "each loss." The UIM provision further provides in relevant part:

Bodily Injury – means bodily injury to a ***person*** and sickness, disease or death which results from it.

*State Farm Mutual Automobile Insurance Company v. Jakupko***Case Synopsis (continued)****UNDERINSURED MOTOR VEHICLE – COVERAGE W**

We will pay damages for ***bodily injury*** an ***insured*** is legally entitled to collect from the owner or driver of an ***underinsured motor vehicle***. The ***bodily injury*** must be caused by accident arising out of the operation, maintenance or use of an ***underinsured motor vehicle***.

Limits of Liability—Coverage W

1. The amount of coverage is shown on the declarations page under “Limits of Liability – W – Each Person, Each Accident.” Under “Each Person” is the amount of coverage of all damages due to ***bodily injury*** to one ***person***. “***Bodily injury*** to one ***person***” includes all injury and damages to others resulting from this ***bodily injury***. Under “Each Accident” is the total amount of coverage, subject to the amount shown under “Each Person” for all damages due to ***bodily injury*** to two or more ***persons*** in the same accident.

The Jakupkos filed a complaint against State Farm seeking an additional \$200,000 under the UIM provision in Richard’s automobile policy. In particular, they assert that Patricia, Nicholas, and Matthew are each entitled to “each person” compensation for their claims of negligent infliction of emotional distress as a result of witnessing Richard’s injuries during the collision. State Farm filed

a motion for summary judgment alleging that the maximum amount payable under the UIM policy provision was \$100,000, the coverage limit for bodily injury to Richard, including all injury and damages to others resulting from the bodily injury to Richard. The Jakupkos responded to that motion and filed their own motion for summary judgment alleging that they were entitled to the aggregate “each accident” limit of \$300,000 under the terms of the UIM provision.

Following a hearing, the trial court in Hamilton County denied State Farm’s motion for summary judgment, finding that the Jakupkos are entitled to separate “each person” limits under the terms of the UIM provision up to the maximum “each accident” limit of \$300,000.

Parties’ Arguments

On appeal, State Farm contends that while Patricia, Nicholas and Matthew may have claims for negligent infliction of emotional distress, they are not compensable separately under the policy’s “each person” coverage. State Farm maintains that “each person” coverage only applies to a “bodily injury” sustained as a re-

Case Synopsis (continued)

sult of the accident and that emotional distress is not a “bodily injury” as that term is defined in the policy. Instead, State Farm contends that the Jakupkos’ emotional distress damages are derivative of Richard’s bodily injuries and, therefore, are only compensable under the same coverage for his injuries, which has a maximum limit of \$100,000. State Farm relies on the policy provision stating that “bodily injury to one person” includes “all injury and damages to others resulting from this bodily injury.”

The Jakupkos contend that their emotional damages are bodily injuries under the policy and that they are, therefore, entitled to separate awards under the “each person” coverage.

The Jakupkos also assert that the provision in the State Farm policy that purports to exclude negligent infliction of emotional distress claims from the standard “per person” and “each accident” policy limits is ambiguous and, therefore, must be construed in favor of the insured. Finally, the Jakupkos contend that the State Farm UIM provision violates Indiana Code Section 27-7-5-2, the Uninsured and Underinsured Motorist Statute, since, they maintain, that statute requires coverage for each separate negligent infliction of emotional distress claim.



Opinion in this case expected: Late fall

For the convenience of residents of Meadowood Retirement Community, a printed copy of the opinion will be forwarded to Kathy Weigle.

For more information, please visit the Indiana Court of Appeals website at <http://www.in.gov/judiciary/appeals/>

Or contact:

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Court of Appeals opinions are available online at <http://www.in.gov/judiciary/opinions/appeals.html>.

Locate archived opinions at <http://www.in.gov/judiciary/opinions/archapp.html>

TODAY'S PANEL OF JUDGES

Hon. John T. Sharpnack (Bartholomew County), Presiding

- Judge of the Court of Appeals since January 1991

Judge Sharpnack, a native of Columbus, was appointed to the Court of Appeals by Governor Evan Bayh. He received his undergraduate and law degrees from the University of Cincinnati, where he was also Editor-in-Chief of the Law Review. Between degrees, he served a tour in the United States Army. Following graduation from law school in 1960, Judge Sharpnack joined the Honor Graduate Program at the Antitrust Division of the U.S. Department of Justice in Washington, DC as an attorney. Three years later he returned to Columbus, becoming a partner at Sharpnack, Bigley, David and Rumble, where he practiced until his appointment to the Court. While in private practice, Judge Sharpnack was active in legal associations and community groups. He served as Chairman of both the Trial Section and the House of Delegates of the Indiana State Bar Association, and for five years was a member of the State Bar's Ethics Committee. For six years he was a member of the Indiana

Supreme Court Committee on Rules of Practice and Procedure, and from 1987 to 1988, he was President of the Indiana Defense Lawyers Association. He also served on several local boards, including the Foundation for Youth, the United Way, and the Harrison Township Volunteer Fire Department. Judge Sharpnack was retained on the Court of Appeals by election in 1994 and 2004.

Hon. Edward W. Najam, Jr. (Monroe County)

- Judge of the Court of Appeals since December 1992

Judge Najam graduated from the Indiana University High School in Bloomington, where he grew up and still resides. He received his B.A. in political science, with highest distinction, from Indiana University, and his law degree from Harvard. As an undergraduate he was elected Student Body President, elected to Phi Beta Kappa, and received the Herman B Wells Senior Recognition Award for academic excellence and

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began just prior to the Court's centennial in 2001.

Today's oral argument is the 165th case the Court of Appeals has heard "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses. Today's case is the first the Court has heard at a retirement community.

TODAY'S PANEL OF JUDGES

Judge Edward W. Najam, Jr. (continued)

campus leadership. After law school, Judge Najam returned to Bloomington and served as Administrative Assistant to Mayor Frank McCloskey for two years. For the next 18 years, Judge Najam maintained a general civil and trial practice. During that time he served on attorney advisory committees to the United States District Court for the Southern District of Indiana, was a member of the Bloomington Rotary Club, and was a Director and President of the Monroe County YMCA. Governor Evan Bayh appointed him to the Court of Appeals in 1992, and he was retained by the electorate in 1996. Since joining the Court, Judge Najam has served on the Indiana Supreme Court Rules Committee and the Supreme Court Judicial Technology and Automation Committee, and he represents the Indiana judiciary on the Indiana Department of Homeland Security Counter-Terrorism and Security Council. In 2001, Judge Najam co-chaired the first national conference on the institutional role of state intermediate appellate courts, which was attended by judges from twenty-two states.

Judge Najam is the author of "Public School Finance in Indiana: A Critique," published in the Indiana Law Journal, and "Caught in the Middle: The Role of State Intermediate Appellate Courts," published in the Indiana Law Review. As chair of the Appellate Practice Section of the Indiana State Bar Association, Judge Najam initiated "the appellate rules project" that culminated in a complete revision of the Indiana Rules of Appellate Procedure. Judge Najam was a member of the first class of the Indiana Graduate Program For Judges in 1997. He lectures on appellate practice and has recently taught seminars on the rules for the admission of scientific evidence and litigation in public health emergencies. Judge Najam is a member of the American, Indiana, and Monroe County Bar Associations and the ABA Appellate Judges Conference, is a member of Phi Delta Phi Legal Fraternity, is a Fellow of the Indiana and Indianapolis Bar Foundations, and is an Eagle Scout.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES

Hon. Margret G. Robb (Tippecanoe County)

- Judge of the Court of Appeals since July 1998

Margret G. Robb was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis. Prior to joining the Court she was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana. District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Commit-

tee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges. Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding

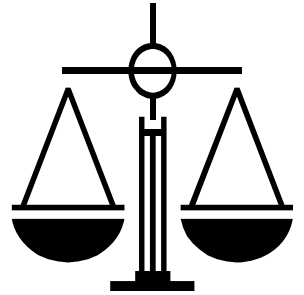


TODAY'S PANEL OF JUDGES

Judge Margret G. Robb *(continued)*

professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YWCA Salute to Women Women "Women of Distinction" Award. Judge Robb, who

was retained on the Court of Appeals by election in 2000, lives in West Lafayette with her husband, a Professor of Communication at Purdue (M.A. and Ph.D., Indiana University). Their son, Douglas, a graduate of the U. S.N.A., recently embarked on his first deployment.



ATTORNEYS FOR THE PARTIES

For Appellant, State Farm: **Karl Mulvaney** **Bingham McHale Law** **Firm** **Indianapolis**

Mr. Mulvaney is a partner in the firm of Bingham McHale LLP in Indianapolis. He received his BS degree (*cum laude*) from The Ohio State University in 1972, and a J.D. degree (*cum laude*) from Indiana University School of Law – Indianapolis in 1977. Mr. Mulvaney has been a contributing author and speaker at numerous programs sponsored by the Indiana Continuing Legal Education Forum (ICLEF) and other organizations. He is the author of "Fundamental Change In Indiana Appellate Procedure, Or What Happened To The Motion to Correct Error,"

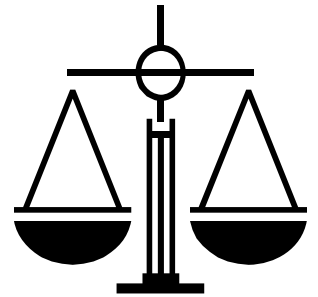
which received the Best Article Award in 1989 from *Res Gestae*, the Indiana State Bar Association's legal chronicle. Mr. Mulvaney practices primarily in the appellate and attorney discipline areas. He is a fellow of the American Academy of Appellate Lawyers and was formerly the Court Administrator, Assistant Administrator and law clerk at the Indiana Supreme Court from 1976 to 1991. For 11 years, from 1992 to 2003, he was chair of the Indiana Supreme Court Committee on Rules of Practice and Procedure, and from 1998 to 2001 was a member of the Indiana Judicial Qualifications Commission. He was the 44th International President of the Phi Delta Phi Legal Fraternity, served in the United States Army from 1972 to 1974, received the Army Commendation Medal, and is a Sagamore of the Wabash.

ATTORNEYS FOR THE PARTIES

For Appellee, Jakupko Family:
John F. Townsend III
Townsend & Montross
Law Firm
Indianapolis

John F. Townsend III is a member of the law firm Townsend & Montross in Indianapolis. Founded in 1941 by Mr. Townsend's grandfather, it has functioned continually ever since as a family firm, representing only individuals in civil cases. Mr. Townsend obtained a BA in history and political science from the University of Michigan in 1993 and his JD from Indiana University-Bloomington in 1996, where he was inducted into the Order of the Coif. Fluent in Spanish, he attended the University of Salamanca in Spain in 1992. He is admitted to practice in all federal and

state courts in Indiana and the federal appeals court in Chicago and presented over 50 jury trials throughout the Midwest. Mr. Townsend is a member of the Indianapolis, Indiana State and American Bar Associations and serves on the Board of Directors of the Indiana Trial Lawyers Association and the Board of Governors for the Association of Trial Lawyers of America (New Lawyers Division). His practice focuses exclusively on representing victims of negligence. His law firm does not advertise due to a belief that these ads convey the wrong message about the civil justice system. Instead, Mr. Townsend encourages individuals seeking an attorney to base their selection on the attorney's history and proven ability.



AMICUS BRIEFS

A person who is not a party to a lawsuit may file a brief of amicus curiae, with permission of the Court, if he or she has a strong interest in the subject matter.

- The Indiana Trial Lawyers Association has filed a Brief of Amicus Curiae in support of the Jakupkos' arguments on appeal.